IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

WP(C).No. 16944 of 2007(P)

PETITIONER:

T.P.ASSOCIATES,
CHULLIYODE ROAD, SULTHAN BATHERY,
WAYANAD DISTRICT, REPRESENTED BY
ITS PARTNER C. HARIS.

BY ADV. SRI.R.RAMADAS

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, TAXES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, KOZHIKODE.

3. THE COMMERCIAL TAX OFFICER,
(AUDIT ASSESSMENT), SULTHAN BATHERY,
WAYANAD DISTRICT.

4. THE TAHSILDAR (R.R.),
AMBALAVAYAL, WAYANAD DISTRICT.

BY ADV. SHRI.C.K.GOVINDAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 16944/2007

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE ASSESSMENT ORDER DATED 24/01/2007 ISSUED BY THE 3RD RESPONDENT FOR THE PERIOD 2005-06.

P2 : COPY OF THE APPEAL DATED NIL MARCH 2007 PENDING BEFORE THE 2ND RESPONDENT.

P3 : COPY OF THE STAY PETITION DATED NIL MARCH 2007 PENDING BEFORE THE 2ND RESPONDENT.

P4 : COPY OF THE REVENUE RECOVERY NOTICE DATED 03/05/2007 ISSUED BY THE 4TH RESPONDENT.

P5 : COPY OF THE NOTICE DATED 29/05/2007 FROM THE 2ND RESPONDENT TO THE PETITIONER.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 16944 of 2007

Dated, this the 7th day of September, 2007

J U D G M E N T

The question raised is whether petitioner has to file separate appeals against common audit assessment order issued for the year 2005-06, whereunder the Assessing Officer made separate assessments for each month. The Office of the appellate authority raised objections. The learned counsel has relied on Rule 39(5)(iv) of the KVAT Rules and Section 55 of the KVAT Act and contended that single appeal is maintainable against one assessment order though liability is computed separately for each month. Since the grounds are common, even if separate appeals are to be filed, the appellate authority can dispense with filing of separate appeals by demanding Court Fee for total number of appeals. Since maintainability of single appeal is raised only by the Registry, I direct the Deputy Commissioner (Appeals) to consider the maintainability of common appeal and thereafter decide the appeal on merits and if separate appeals ought to have been filed, he is free to demand additional Court Fee for the reasons to be stated by him. If petitioner has grievance, he can challenge the same in this

Court or in further appeal. If petitioner has paid Rs. 2.5 lakhs out of the disputed tax in terms of interim order dated 04/06/2007, then recovery of the balance disputed tax will remain stayed till disposal of the appeal. The appellate authority is directed to dispose of the appeal within three months from now. Petitioner will produce copy of the judgment for compliance.

This writ petition is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg